

REFERENCE TITLE: new school construction

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SB 1404

Introduced by
Senators Garcia, Aguirre: Miranda

AN ACT

AMENDING SECTIONS 15-2004, 15-2005 AND 15-2006, ARIZONA REVISED STATUTES;
MAKING A TRANSFER OF MONIES; RELATING TO SCHOOL FACILITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-2004, Arizona Revised Statutes, is amended to
3 read:

4 15-2004. School facilities board lease-to-own; fund; expiration

5 A. In order to fulfill the requirements of section 15-2041, the school
6 facilities board may acquire school facilities for the use of one or more
7 school districts by entering into one or more lease-to-own transactions in
8 accordance with this section. For THE purposes of this section, providing
9 school facilities includes land acquisition, related infrastructure,
10 fixtures, furnishings, equipment and costs of the lease-to-own transaction.
11 The school facilities board may provide monies to provide school facilities
12 in part pursuant to section 15-2041 and in part through a lease-to-own
13 transaction.

14 B. A lease-to-own transaction may provide for:

15 1. The ground lease of the land for the facilities to a private entity
16 for the term of the lease-to-own transaction or for a term of up to one and
17 one-half times the term of the lease-to-own transaction, subject to earlier
18 termination on completion of performance of the lease-to-own agreement. The
19 ground lessor may either be the school district or the school facilities
20 board, whichever holds title to the land.

21 2. The lease of the completed school facilities by a private entity to
22 the school facilities board for an extended term of years pursuant to a
23 lease-to-own agreement.

24 3. The sublease of the completed school facilities by the school
25 facilities board to the school district during the term of the lease-to-own
26 agreement. The sublease shall provide for the use, maintenance and operation
27 of the school facilities by the school district and for the transfer of
28 ownership of the school facilities to the school district on completion of
29 performance of the lease-to-own agreement.

30 4. The option for the school facilities board's purchase of the school
31 facilities and transfer of ownership of the school facilities to the school
32 district before the expiration of the lease-to-own agreement.

33 5. The services of trustees, financial advisors, paying agents,
34 transfer agents, underwriters, lawyers and other professional service
35 providers, credit enhancements or liquidity facilities and all other services
36 considered necessary by the school facilities board in connection with the
37 lease-to-own transaction, and related agreements and arrangements including
38 arrangements for the creation and sale of certificates of participation
39 evidencing proportionate interests in the lease payments to be made by the
40 school facilities board pursuant to the lease-to-own agreement.

41 C. The sublease of the school facilities to the school district is
42 subject to this section and to the provisions of the lease-to-own agreement.
43 Neither a ground lease by the school district as lessor nor a sublease of the
44 school facilities to the school district is required to be authorized by a
45 vote of the school district electors. A ground lease is not subject to any

1 limitations or requirements applicable to leases or lease-purchase agreements
2 pursuant to section 15-342 or any other section of this title.

3 D. Any school facility that is constructed through a lease-to-own
4 agreement shall meet the minimum building adequacy standards set forth in
5 section 15-2011.

6 E. School districts may use local monies to exceed the minimum
7 adequacy standards and to build athletic fields and any other capital project
8 for leased-to-own facilities.

9 F. The school facilities board shall include any square footage of new
10 school facilities constructed through lease-to-own agreements in the
11 computations prescribed in section 15-2011.

12 G. Pursuant to section 15-2031, a school district is eligible to
13 receive building renewal monies for any facility constructed through a
14 lease-to-own agreement. If a facility's building maintenance renewal is
15 included in the lease-to-own agreement, the facility shall not be included in
16 the district's building renewal calculation.

17 H. A lease-to-own fund is established consisting of monies
18 appropriated by the legislature. The school facilities board shall
19 administer the fund and distribute monies in the fund to make payments
20 pursuant to lease-to-own agreements entered into by the school facilities
21 board pursuant to this section, to make payments to or for the benefit of
22 school districts pursuant to local lease-to-own agreements entered into by
23 school districts pursuant to section 15-2005 and to pay costs considered
24 necessary by the school facilities board in connection with lease-to-own
25 transactions and local lease-to-own transactions. Payments by the school
26 facilities board pursuant to a lease-to-own agreement or local lease-to-own
27 agreement shall be made only from the lease-to-own fund. On notice from the
28 school facilities board, the state treasurer shall invest and divest monies
29 in the fund as provided by section 35-313, and monies earned from investment
30 shall be credited to the lease-to-own fund.

31 I. A lease-to-own agreement entered into by the school facilities
32 board pursuant to this section shall provide that:

33 1. At the completion of the lease-to-own agreement, ownership of the
34 school facilities and land associated with the lease-to-own agreement shall
35 be transferred to the school district as specified in the agreement.

36 2. The obligation of the school facilities board to make any payment
37 under the lease-to-own agreement is a current expense, payable exclusively
38 from appropriated monies, and is not a general obligation indebtedness of
39 this state or the school facilities board. The obligation of a school
40 district to make expenditures under a sublease pursuant to subsection B,
41 paragraph 3 of this section is a current expense, payable exclusively from
42 budgeted monies, and is not a general obligation indebtedness of the school
43 district.

44 3. If the legislature fails to appropriate monies or the school
45 facilities board fails to allocate such monies for any periodic payment or

renewal term of the lease-to-own agreement, the lease-to-own agreement terminates at the end of the current term and this state and the school facilities board are relieved of any subsequent obligation under the agreement and the school district is relieved of any subsequent obligation under the sublease.

4. The lease-to-own agreement shall be reviewed and approved by the attorney general before the agreement may take effect.

5. Before the agreement takes effect and after review by the attorney general, the project or projects related to the agreement shall be submitted for review by the joint committee on capital review.

J. The school facilities board may covenant to use its best efforts to budget, obtain, allocate and maintain sufficient appropriated monies to make payments under a lease-to-own agreement, but the lease-to-own agreement shall acknowledge that appropriating state monies is a legislative act and is beyond the control of the school facilities board or of any other party to the lease-to-own agreement.

K. The land and the school facilities on the land are exempt from taxation during the term of the lease-to-own agreement and during construction and subsequent occupancy by the school district pursuant to the sublease.

L. The powers prescribed in this section are in addition to the powers conferred by any other law. Without reference to any other provision of this title or to any other law, this section is authority for the completion of the purposes prescribed in this section for the school facilities board to provide school facilities for use by school districts through lease-to-own transactions pursuant to this section without regard to the procedure required by any other law. Except as otherwise provided in this section, the provisions of this title that relate to the matters contained in this section are superseded because this section is the exclusive law on these matters.

M. The school facilities board shall not enter into lease-to-own transactions, including any refinancings or refundings, pursuant to this section from and after ~~May 15, 2006~~ JUNE 30, 2008.

Sec. 2. Section 15-2005, Arizona Revised Statutes, is amended to read:

15-2005. Local lease-to-own by school districts; expiration

A. In order to fulfill the requirements of section 15-2041, with the approval of the school facilities board, a school district may acquire school facilities by entering into a local lease-to-own transaction in accordance with this section. For THE purposes of this section, providing school facilities includes land acquisition, related infrastructure, fixtures, furnishings, equipment and costs of the local lease-to-own transaction. The school facilities board may provide monies to provide school facilities in part pursuant to section 15-2041 and in part through payments to or for the benefit of a school district for a local lease-to-own transaction.

B. A local lease-to-own transaction may provide for:

1 1. The ground lease of the land for the facilities to a private entity
2 for the term of the local lease-to-own transaction or for a term of up to one
3 and one-half times the term of the local lease-to-own transaction, subject to
4 earlier termination on completion of performance of the local lease-to-own
5 agreement. The ground lessor may either be the school district or the school
6 facilities board, whichever holds title to the land.

7 2. The lease of the completed school facilities by a private entity to
8 the school district for an extended term of years pursuant to a local
9 lease-to-own agreement. The local lease-to-own agreement shall provide for
10 the use, maintenance and operation of the school facilities by the school
11 district and for the transfer of ownership of the school facilities to the
12 school district on completion of performance of the local lease-to-own
13 agreement.

14 3. The option for the school district's purchase of the school
15 facilities and transfer of ownership of the school facilities to the school
16 district before the expiration of the local lease-to-own agreement.

17 4. The services of trustees, financial advisors, paying agents,
18 transfer agents, underwriters, lawyers and other professional service
19 providers, credit enhancements or liquidity facilities and all other services
20 considered necessary by the school district or the school facilities board in
21 connection with the local lease-to-own transaction, and related agreements
22 and arrangements including arrangements for the creation and sale of
23 certificates of participation evidencing proportionate interests in the lease
24 payments to be made by the school district pursuant to the local lease-to-own
25 agreement.

26 C. Neither a ground lease by the school district as lessor nor a local
27 lease-to-own agreement is required to be authorized by a vote of the school
28 district electors. A ground lease is not subject to any limitations or
29 requirements applicable to leases or lease-purchase agreements pursuant to
30 section 15-342 or any other section of this title.

31 D. The school facilities board may make payments to or for the benefit
32 of the school district from the lease-to-own fund established by section
33 15-2004 for the payment of amounts payable under the local lease-to-own
34 agreement.

35 E. Any school facility that is constructed through a lease-to-own
36 agreement shall meet the minimum building adequacy standards set forth in
37 section 15-2011.

38 F. School districts may use local monies to exceed the minimum
39 adequacy standards and to build athletic fields and any other capital project
40 for leased-to-own facilities.

41 G. The school facilities board shall include any square footage of new
42 school facilities constructed through lease-to-own agreements in the
43 computations prescribed in section 15-2011.

44 H. Pursuant to section 15-2031, a school district is eligible to
45 receive building renewal monies for any facility constructed through a

1 lease-to-own agreement. If a facility's building maintenance renewal is
2 included in the lease-to-own agreement, the facility shall not be included in
3 the district's building renewal calculation.

4 I. A local lease-to-own agreement entered into by a school district
5 pursuant to this section shall provide that:

6 1. At the completion of the lease-to-own agreement, ownership of the
7 school facilities and land associated with the lease-to-own agreement shall
8 be transferred to the school district as specified in the agreement.

9 2. The obligation of the school district to make any payment or
10 expenditure under the local lease-to-own agreement is a current expense,
11 payable exclusively from properly budgeted monies, and is not a general
12 obligation indebtedness of this state, the school facilities board or the
13 school district, and that any payment by the school facilities board to or
14 for the benefit of the school district from the lease-to-own fund established
15 by section 15-2004 for payments of amounts payable under the local
16 lease-to-own agreement is a current expense, payable exclusively from
17 appropriated monies, and is not a general obligation indebtedness of this
18 state or the school facilities board.

19 3. If the school district fails to properly budget for payments under
20 the local lease-to-own agreement or if the legislature fails to appropriate
21 monies or the school facilities board fails to allocate monies for periodic
22 payment to or for the benefit of the school district for payments under the
23 local lease-to-own agreement, the local lease-to-own agreement terminates at
24 the end of the current term and the school district, the school facilities
25 board and this state are relieved of any subsequent obligation under the
26 local lease-to-own agreement.

27 4. The local lease-to-own agreement shall be reviewed and approved by
28 the attorney general before the agreement may take effect.

29 5. Before the agreement takes effect and after review by the attorney
30 general, the project or projects related to the agreement shall be submitted
31 for review by the joint committee on capital review.

32 J. The school district may covenant to use its best efforts to budget,
33 obtain, allocate and maintain sufficient monies to make payments under a
34 local lease-to-own agreement, but the local lease-to-own agreement shall
35 acknowledge that budgeting school district monies is a governmental act of
36 the school district governing board that may not be contracted away. The
37 school facilities board is not required to covenant to budget, obtain,
38 allocate or maintain sufficient monies in the lease-to-own fund to make
39 payments to or for the benefit of a school district for payments under a
40 local lease-to-own agreement.

41 K. The land and the school facilities on the land are exempt from
42 taxation during the term of the local lease-to-own agreement and during
43 construction and subsequent occupancy by the school district pursuant to the
44 local lease-to-own agreement.

1 L. The powers prescribed in this section are in addition to the powers
2 conferred by any other law. Without reference to any other provision of this
3 title or to any other law, this section is authority for the completion of
4 the purposes prescribed in this section for school districts to provide
5 school facilities through local lease-to-own transactions pursuant to this
6 section without regard to the procedure required by any other law. Except as
7 otherwise provided in this section, the provisions of this title that relate
8 to the matters contained in this section are superseded because this section
9 is the exclusive law on these matters.

10 M. School districts shall not enter into lease-to-own transactions,
11 including any refinancings or refundings, pursuant to this section from and
12 after ~~May 15, 2006~~ JUNE 30, 2008.

13 Sec. 3. Section 15-2006, Arizona Revised Statutes, is amended to read:
14 15-2006. Lease-to-own amount; expiration

15 A. In order to fulfill the requirements of section 15-2041, the school
16 facilities board may enter into lease-to-own transactions for up to a maximum
17 of two hundred million dollars in any fiscal year.

18 B. The school facilities board shall not enter into lease-to-own
19 transactions, including any refinancings or refundings, pursuant to this
20 section from and after ~~May 15, 2006~~ JUNE 30, 2008.

21 Sec. 4. New school facilities; lease-to-own; transfer of monies

22 A. The school facilities board shall enter into lease-to-own
23 transactions pursuant to sections 15-2004, 15-2005 and 15-2006, Arizona
24 Revised Statutes, to pay for the costs of new school facilities in fiscal
25 year 2007-2008.

26 B. Notwithstanding section 15-2006, Arizona Revised Statutes, the
27 school facilities board shall enter into lease-to-own transactions in an
28 amount not to exceed \$407,700,000 in fiscal year 2007-2008 in order to
29 fulfill the requirements of section 15-2041, Arizona Revised Statutes.

30 C. Notwithstanding section 15-2041, Arizona Revised Statutes, the
31 school facilities board may transfer monies from the new school facilities
32 fund to the lease-to-own fund established by section 15-2004, Arizona Revised
33 Statutes, in fiscal year 2007-2008 for the purposes of that section.

34 D. Notwithstanding section 35-190, Arizona Revised Statutes, monies
35 remaining in the lease-to-own fund established by section 15-2004, Arizona
36 Revised Statutes, at the end of fiscal year 2007-2008 shall not revert to the
37 state general fund.